

REMARKS

In the subject Office action of 06 June 2006, claims 1-20 were examined. In response thereto, Applicant has amended claims 1, 2, 5, 8, 9, 12, 13, 15, 17 and 18, canceled claims 3, 4, 6, 7, 14, 16, 19, and 20, and maintained claims 10, 11, 13, and 15 under active prosecution in the present application. Applicant respectfully asserts that all amendments are supported by the original disclosure and do not introduce new matter.

In the subject Office Action dated June 6, 2006, the drawings were objected to because several characters are crossed out or scribbled through, making some of the characters difficult to read. For example, in Fig. 1, the distal hinge is inferred to be referenced by character 44, but that number was deemed not clear in the drawings. In response, Applicant has submitted herewith corrected drawing sheets in compliance with 37 CFR 1.121(d) annotated as replacement sheets.

In addition, claims 1-5, 8, 9, 11, 12, and 18-20 were rejected under 35 U.S.C. 102(b) as being anticipated by Huebsch et al. (US 5853422). Claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over Huebsch in view of Adams (US 6632227). Claims 6, 7 and 13-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Huebsch.

Turning to independent claim 1, the claim as amended recites in part an applier for an anastomosis ring device having distal, center and proximal rings wherein first and second controls may be selectively positioned to reduce a first longitudinal separation between the center ring and a selected one of the proximal and distal rings causing actuating of interposed hinged arms of the ring device while maintaining a second longitudinal separation between the center ring and the other ring preventing actuating of the interposed hinged arms of the ring device. When ready to implant the anastomosis ring device, the first and second controls may be selectively positioned to reduce the longitudinal separation between the center ring and both the proximal ring and distal ring, causing actuating of all of the hinged arms of the ring.

As amended, claim 1 resembles the limitations of original claims 6, 7 and 13-17 that were rejected under 35 U.S.C. 103(a) as being unpatentable over Huebsch. In particular, the Examiner made these observations:

Huebsch does however teach wherein the actuating member is engaged to both the proximal and distal rings to actuate movement of both rings toward the center ring. It would have been an obvious matter of design choice to modify the device of Huebsch by attaching the actuator to the center ring as opposed to the proximal ring since the applicant has not disclosed that actuation by pulling center and distal rings toward the proximal ring is for any particular purpose or serves any advantage over pulling both rings toward the center ring and it appears that the device of Huebsch performs the task of actuating the device equally well as that disclosed in the application.

Applicant notes that Huebsch is directed to correcting a septal defect in a single tissue barrier between heart chambers. Moving one of the two controls (310, 312) of Huesch fails to hold the center portion of the septal ring device stationary with respect to the end of the septal ring device controlled by the other control. Thus, operating one control actuates the entire device partially.

What Huebsch fails to teach or suggest is addressing a challenge for an anastomosis device between gastric lumens (e.g., stomach, intestines) wherein two tissue walls are brought into apposition. Moreover, a surgical instrument may advantageously approach the anastomosis site from one of the two tissue lumens without the necessity for other intrusive incisions and additional positioning instruments, yet be capable of pushing proximal tissue lumen toward the distal tissue lumen and/or pulling the distal tissue lumen toward the proximal tissue lumen. An applier capable of partially actuating either distal arms or proximal arms only may service this function respectively, as described in the Summary of the Invention of the present application:

[0014] The invention overcomes the above-noted and other deficiencies of the prior art by providing an applier for an absorbable ring for a single lumen access anastomosis, the combination being suitable and sufficient to perform lumen control and apposition as well as enterotomy control. The applier then may be inserted through a trocar and applied without any additional parts such as an anvil. The applier holds the absorbable ring that has distal and proximal arm segments that the applier individually actuates to enhance control. For instance, the distal arm segments may be expanded in a distal lumen, which is then drawn back into closer contact with the proximal lumen before actuating the proximal arm segment. Alternatively, the proximal arm segments may be expanded first and the

first lumen positioned relative to the second lumen. Thereby, positioning the two lumens to be anastomotized is simplified.

Consequently, the cited references fail to provide a suggestion or motivation for modifying the applier of Huesch to be capable of selective half actuation for the purpose of selective positioning proximal or distal tissue lumens in preparation for performing an anastomosis. Reconsideration and allowance of claim 1, as well as claims 2, 5, and 8-11 that depend therefrom, is respectfully requested.

Turning to independent claim 12, the claim as amended recites in part an applier that includes a first control on the handle operatively configured to position at least one of the first, second and third members to separately actuate the plurality of distal arms; and a second control on the handle operatively configured to position at least one of the first, second and third members to separately actuate the plurality of distal arms.

For the reasons given above for claim 1, reconsideration and allowance is respectfully requested for claim 12, as well as claims 13, 15, and 17 that depend therefrom.

Turning to independent claim 18, the claim as amended recites in part an applier that has a means for actuating a selected one of pluralities of proximal arms and of distal arms holding the unselected plurality unactuated for positioning tissue lumens for anastomosis, and for actuating both pluralities of proximal and distal arms to deploy the anastomosis ring device.

For the reasons given above for claim 1, reconsideration and allowance is respectfully requested for claim 18.

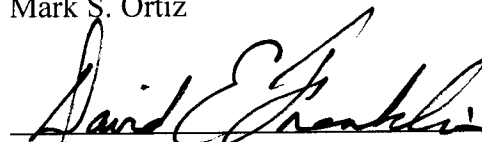
Conclusion

In light of the amendments and remarks made herein, it is respectfully submitted that the claims currently pending in the present application are in form for allowance. Accordingly, reconsideration of those claims, as amended herein, is earnestly solicited. Applicant encourages the Examiner to contact their representative, David Franklin at (513) 651-6856 or dfranklin@fbtlaw.com.

In the original application 20 claims with 3 independent claims were filed. After amendment, the claims number 12 total with 3 independent claims. Therefore, no fees are due. The Commissioner for Patents, however, is hereby authorized to charge any deficiency or credit any overpayment of fees to Frost Brown Todd LLC Deposit Account No. 06-2226.

Respectfully submitted,

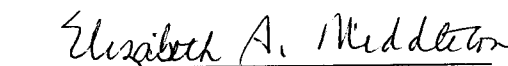
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